IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16710 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHISH GYMKHANA PVT. LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16710 of 2003

MR KANTILAL S PATEL for Petitioner No. 1

MR GAURANG K PATEL for Petitioner No. 1

MRS HANSABEN PUNANI, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/12/2003

ORAL JUDGEMENT

1. Heard ld.counsel appearing for the parties.

2. By invoking jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner M/s Ashish Gymkhana Pvt. Ltd. (hereinafter referred to as "petitioner company" for short) has prayed following main reliefs:-

"(A) xxx xxx xxx

(B) be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other writ, order of direction directing the respondents, their servants and agents not to interfere with the activities of the petitioner, its club members and guests of playing the skill games of Rummy and Marriage in the Card Room of the Club premises run by the petitioner Company;

(C) be pleased to hold and declare that the provisions of The Bombay Prevention of Gambling Act do not apply to the legitimate and legal activities of the petitioner, its club members and their guests of playing skill games of Rummy and Marriage at the club premises of the petitioner company, by issuing suitable writ, order or direction under Article 226 of the Constitution of India;

(D) be pleased to grant interim direction, directing the respondents, their agents and servants not to interfere with, disturb and threaten the petitioner company, its club members and their guests from playing skill games of Rummy and Marriage in the Card Room of the club premises run by the petitioner company, till this petition is finally heard and decided;

(E) xxx xxx xxx

(F) xxx xxx xxx

3. The petitioner is a company duly registered under the provisions of the Companies Act, 1956 and as per the object of the petitioner company as per its Memorandum of Association is to encourage and promote various indoor and outdoor games and sports in the State of Gujarat, to organise, promote and afford facilities for organising various games in the premises of the Company, to promote

and hold either alone or jointly matches or competitions of various games and all kinds of spotting events, entertainment, exhibitions, etc., to lay out in ground for playing the games and sports and to provide for various facilities for such purpose, to construct, acquire, maintain, carry and manage clubs, gardens, club rooms, billiard rooms, libraries, reading rooms, refreshment rooms, recreation and entertainment rooms etc.. with all necessary facilities and accommodation. Over and above these main objects of the company, there are many other objects of the company as provided in the Memorandum of Association of the company.

4. It is the say of the petitioner that frequent visits by the officers of the State of Gujarat have disturbed the activities and they have been threatened to close games of Rummy and Marriage. According to learned counsel Mr. K.J. Patel, conjunctures or assumptions attributed to the petitioner company being highly unjust, illegal, arbitrary and unreasonable and, therefore, the reliefs as prayed be granted. In support of his submissions, Mr. Patel has taken me through relevant documents produced by the petitioner including certificate of incorporation and Memorandum of Association of the Company. He has mainly placed reliance on the following decisions; namely-

(i) Decision in the case of Sudama Resorts Pvt. Ltd. v/s State of Gujarat, rendered by this Court in Spl.C.A. No. 10105/2001 on 5.11.2001 (Coram: Kundan Singh, J);

(ii) Decision in the case of Kismat Gymkhana Pvt.Ltd. v/s State of Gujarat, rendered by this Court in Spl.C.A. No.3341/2001 on 7.8.2001 (Coram : K.M.Mehta,J);

Mr. Patel has also referred to number of various decisions in the memo of petition wherein similar issues were brought before this Court under Article 226 of the Constitution of India.

5. It would be appropriate to quote relevant part of para-5 of the decision of this Court in the case of Sudama Resorts Pvt.Ltd. (supra), wherein the Court has observed that:-

" Therefore, regard being had to the contention coming from the learned counsel Mr. Soni and the decision of the Supreme Court in the case of the State of Andhra Pradesh (supra) and

> the decisions of this Court it appears that the present petition requires recognition and the rule requires to be made absolute. I order accordingly and direct that the respondents shall not interfere with the game of Rummy and Marriage being played by the members of the petitioner club and their guests in the club premises. These orders shall never preclude the concerned respondents or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or the members of the club are playing any other game which could be said to be objectionable or prohibited under the law or the rules."

5. There is no formal resistance by the otherside by way of affidavit-in-reply. However, ld. AGP Ms. Punani has submitted that the respondents and their officers are supposed to regulate the activities of such club and officers have rights and authority to enter the club premises to check and inspect whether any illegal activities contrary to law are being encouraged by the petitioner club or not.

6. This Bench while dealing with Special Civil Application No. 8934 of 2003 referred to the above judgments has allowed the said petition and has issued similar directions in reference to the above reliefs prayed for by the petitioner.

7. Considering the facts and circumstances of the case and settled legal position referred to above, this petition requires to be allowed.

8. In view of above, this petition is allowed. It is hereby ordered and directed that the respondents and their officers shall not interfere with the game of Rummy and Marriage being played by the members of the petitioner club and their guests in the club premises. These orders shall never preclude the concerned respondents or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or the members of the club of the petitioner are playing any other game which could be said to be objectionable or prohibited under the law or the rules.

9. Rule is made absolute accordingly. No order as to costs. DS permitted.

[C.K. BUCH, J]

/JVSatwara/